The Honorable Brian D. Lynch
Chapter 11
Hearing Location: Tacoma, Courtroom I
Hearing Date: January 27, 2011
Hearing Time: 1:00 p.m.

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

In Re: HAWKS PRAIRIE INVESTMENT LLC, Debtor.	No. 10-46635-BDL BALLOT REPORT AND MOTION TO CONFIRM PLAN

HomeStreet Bank ("HSB") files the Report of Ballots and a Motion to Confirm Plan.

I. BALLOT REPORT.

1.1 Introduction.

The Hawks Prairie Plan and Disclosure Statement were mailed to creditors in this case along with a Ballot for creditors to indicate their acceptance or rejection of the Plan. The Ballots were returned to the firm of Ryan Cleveland & Swanson which at the time of the mailing was counsel for Hawks Prairie Investment LLC. The ballots were transmitted to the current counsel for Hawks Prairie, who has not (as of this filing) filed a report on the balloting.

1.2 Voting.

The Plan was accepted by. Real Property Tax creditors; Class 1.

The Plan was accepted by the HomeStreet secured claims; Class 2.

The Plan was rejected by the Talbitzer Glavin secured claims; Class 3.

The Plan was accepted by unsecured creditors; Class 5.

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Class 5 interests did not submit a ballot.

A copy of the transmittal letter from Timothy Dore and the ballots are attached as **Exhibit 1.**

II. CONFIRMATION.

2.1 Vote Not Effective or Permitted.

Class 3 is the jointly held claim of Talbitzer and Glavin. While there are assignees of that claim, there are no other members of Class 3. The plan is confirmable over the attempted rejection of Class 3 because 11 U.S.C. 1126(a) provides that only allowed claims may vote. Claims which are subject to an objection are not "allowed claims." *See,* 11 U.S.C. 502(a).

An objection to the Claim has been on file in this case since December 23, 2010 and no motion for allowance for voting purposes was filed and ordered prior to the class 3 vote. *See,* Fed. R. Bankr. P. 3018(a). The Class 3 vote is not permitted by law.

2.2 Plan Can Be Confirmed Over Class 3 Objection.

The plan is confirmable over the objection of Class 3 because in the event that the lien claimed by the class is allowed, the Plan proposes to provide payment to the class as provided in 11 U.S.C. § 1129(b)(2); which specifies the treatment of a rejecting secured creditor as follows:

> **(A)** With respect to a class of secured claims, the plan provides—
> **(i)**
> **(I)** that the holders of such claims retain the liens securing such claims, whether the property subject to such liens is retained by the debtor or transferred to another entity, to the extent of the allowed amount of such claims; and
> **(II)** that each holder of a claim of such class receive on account of such claim deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property;
> **(ii)** for the sale, subject to section 363(k) of this title, of any property that is subject to the liens securing such claims, free and clear of such liens, with such liens to attach to the proceeds of such sale, and the treatment of such liens on proceeds under clause (i) or (iii) of this subparagraph;

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In this case, Talbitzer and Glavin hold a deed of trust allegedly securing the obligation of Tri Vo. They have no unsecured claim. Their secured claim is subject to an adversary proceeding and its allowance as a claim in this case has not been determined. The plan specifically provides that the allowed claim of Class 3 be paid in the amount, validity and priority was established by agreement or adjudication. Thus, if allowed, the provisions of 1129(b)(2)(A)(I) and (II) are implemented by the Plan and Class 3 paid as required for confirmation.

The Debtor's Plan dated December 14, 2010 should be confirmed.

DATED this 26th day of January, 2011.

FOSTER PEPPER PLLC

s/ Dillon E. Jackson

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Attorneys for Creditor
HomeStreet Bank